



Administrative
Appeals Tribunal

DECISION AND
REASONS FOR DECISION

**Fofana and Minister for Home Affairs (Citizenship) [2019] AATA 4082 (4
October 2019)**

Division: GENERAL DIVISION

File Number(s): **2018/5920**

Re: **Amisan Fofana**

APPLICANT

And **Minister for Home Affairs**

RESPONDENT

DECISION

Tribunal: **Emeritus Professor P A Fairall, Senior Member
Mr S Evans, Member**

Date: **4 October 2019**

Place: **Sydney**

The decision under review is affirmed.

.....[SGD].....

Emeritus Professor P A Fairall, Senior Member

CATCHWORDS

CITIZENSHIP – cancellation of approval of citizenship application – good character – provision of bogus document in support of citizenship application – whether the submission of a bogus document by the applicant demonstrates that she is not a person of good character for the purposes of becoming an Australian citizen – where applicant not of good character – decision affirmed

LEGISLATION

1. *Australian Citizenship Act 2007 (Cth) ss 3, 21, 24, 25, 45A, 50*
2. *Migration Act 1958 (Cth) s 5*

CASES

Fenn and Minister for Immigration and Multicultural Affairs [2000] AATA 931
Irving v Minister for Immigration, Local Government & Ethnic Affairs (1996) 68 FCR 422; [1996] FCA 663
Nguyen and Minister for Immigration and Border Protection (Citizenship) [2018] AATA 1082
Zheng v Minister for Immigration and Citizenship [2011] AATA 304

SECONDARY MATERIALS

Australian Citizenship Policy, 1 July 2016

REASONS FOR DECISION

Emeritus Professor P A Fairall, Senior Member
Mr S Evans, Member

4 October 2019

3. Amisan Fofana (“the **applicant**”) is a citizen of Liberia. She arrived in Australia on 30 April 2010 on a subclass AH-117 (permanent) visa. Ms Fofana applied for Australian citizenship by conferral on 8 May 2016. The application was approved on 13 May 2017.
4. In September 2018 a delegate for the Minister for Home Affairs (“the **respondent**”) cancelled the approval of Ms Fofana’s citizenship on the grounds that she was not of good character, as the Liberian passport she had provided to support her citizenship application was determined to be a bogus document.
5. Ms Fofana seeks a review of the decision by a delegate of the Minister to cancel the approval of her citizenship. Unless otherwise stated, the findings of fact in these reasons are based on the evidence of the applicant.

6. For reasons we will explain, the decision under review is affirmed.

ISSUES

7. The issues before the Tribunal in these proceedings are:
- (a) whether the submission of a bogus document by the applicant demonstrates that she is not a person of good character for the purposes of becoming an Australian citizen; and if so
 - (b) should the Minister cancel her approval of citizenship by conferral under s 25 of the *Australian Citizenship Act 2007* (Cth) (“the **Act**”).

THE RELEVANT LEGISLATIVE FRAMEWORK

Bogus documents

8. A “*bogus document*” is defined under s 3 of the Act to have the same meaning as at s 5 of the *Migration Act 1958* (Cth); namely the document that “*is counterfeit or has been altered by a person who does not have authority to do so.*”
9. Relevantly, s 45A states in relation to bogus documents:
- 1 *A person (whether a citizen or non-citizen) must not give a bogus document to the Minister, a person acting under a delegation or authorisation of the Minister, a tribunal or any other person or body performing a function or purpose under, or in relation to, this Act (the **official**), or cause such a document to be so given.*
 - 2 *A bogus document given in contravention of subsection (1) is forfeited to the Commonwealth.*

False representations or statements

10. Section 50 of the Act relevantly provides that a person commits an offence if the person knowingly makes, or permits to be made, a representation or statement that is false or misleading in a material particular for a purpose of or in relation to the Act.
- 3 *A person commits an offence if:*
 - (a) *the person makes, or causes or permits to be made, a representation or statement; and*

- (b) *the person does so knowing that the representation or statement is false or misleading in a material particular; and*
- (c) *the person does so for a purpose of or in relation to this Act.*

Penalty: Imprisonment for 12 months.

4 *A person commits an offence if:*

- (a) *the person conceals, or causes or permits to be concealed, a material circumstance; and*
- (b) *the person does so for a purpose of or in relation to this Act.*

Penalty: Imprisonment for 12 months.

Minister may cancel approval of citizenship

11. Subsection 21(1) of the Act provides that a person may make an application to the Minister to become an Australian citizen. Subsection 24(1) of the Act provides that the Minister must, by writing, approve or refuse to approve the person becoming an Australian citizen. Subsection 24(1A) of the Act provides that the Minister must not approve a person becoming an Australian citizen if they fail to meet the eligibility criteria in s 21(2), (3), (4), (5), (6), (7) or (8).
12. The Act relevantly provides, at s 25(1), that the Minister may cancel an approval given to a person under s 24 of the Act if a person has not become an Australian citizen and the Minister is satisfied that at the time the Minister proposes to cancel the approval, the person is not of good character.

25 Minister may cancel approval

5 *The Minister may, by writing, cancel an approval given to a person under section 24 if:*

- (a) *the person has not become an Australian citizen under section 28; and*
- (b) *either of the following 2 situations apply.*

Eligibility criteria not met

6 *The first situation applies if:*

- (a) *the person is covered by subsection 21(2), (3) or (4); and*
- (b) *the Minister is satisfied that, at the time the Minister proposes to cancel the approval, the person is:*
 - (i) *not a permanent resident; or*
 - (ii) *not likely to reside, or to continue to reside, in Australia or to maintain a close and continuing association with Australia; or*
 - (iii) *not of good character.*

Effect of cancellation

8 *If the Minister cancels an approval given to a person, the approval is taken never to have been given.*

Note: A person cannot become an Australian citizen under this Subdivision unless the Minister approves the person becoming an Australian citizen. This subsection has the effect that the person will need to make another application if the person wants to become an Australian citizen.

Determining questions of character

13. The expression "good character" is not defined or qualified by the Act. The expression was considered by the Full Court of the Federal Court in *Irving v Minister for Immigration, Local Government and Ethnic Affairs*¹ in the context of the power of the Minister to refuse to issue a visa. Justice Davies said:

It should also be observed that the term "good character" is not precise in its denotation. In one sense, it refers to the mental and moral qualities which an individual has. In another sense, it refers to the individual's reputation or repute: see The Oxford English Dictionary, meanings 11, 12 and 13; The Macquarie Dictionary meanings 1, 2, 3, 4 and 5. Necessarily, when decisions are made in Australia under the Act in relation to persons who are overseas, greater attention tends to be given to objective facts and to reputation or repute rather than to a detailed analysis of the person's inherent qualities. I do not suggest that, in the context, "good character" refers to reputation and repute as such. It does not. But criminal convictions or the absence of them and character references are likely to be an important source of primary information. If there is a criminal conviction, the decision-maker will have regard to the nature of the crime to determine whether or not it reflected adversely upon the character of the applicant. If the conviction was in the past, the decision-maker will turn his attention to whether or not the applicant has shown that he has reformed. If persons speak well of the applicant, the decision-maker will take that into account.²

14. To similar effect, Lee J said:

Unless the terms of the Act and Regulations require some other meaning be applied, the words "good character" should be taken to be used in their ordinary sense, namely, a reference to the enduring moral qualities of a person, and not to the good standing, fame or repute of that person in the community. The former is an objective assessment apt to be proved as a fact whilst the latter is a review subjective public opinion... A person who has been convicted of a serious crime and thereafter held in contempt in the community, nonetheless may show that he or she has reformed and is of good character... Conversely, a person of good repute may be shown by objective assessment to be a person of bad character.³

¹ (1996) 68 FCR 422; [1996] FCA 663.

² (1996) 68 FCR at 425.

³ (1996) 68 FCR at 431.

15. The Department's official guide to decision makers, the Citizenship Policy ("the **Policy**"), provides guidance for decision makers including the Tribunal in determining whether Ms Fofana is of good character.
16. Informed by the discussion in *Irving* the Policy suggests that:
- a decision maker can be satisfied that an applicant is of good character if the applicant has demonstrated good enduring/lasting moral qualities that are evident before their visa application and throughout their migration and citizenship processes.*
17. The Policy specifically calls for the decision-maker to "*look holistically at an applicant's behaviour over a lasting or enduring period of time*". Relevantly, the Policy lists various characteristics that an applicant of good character would have and include:
- (a) *be truthful and not practise deception or fraud in their dealings with the Australian Government, or other governments and organisations, for example:*
- (i) *providing false personal information (such as fraudulent work experience or qualification documents) or other material deception during visa and citizenship applications*
18. The Tribunal is guided by these considerations in determining if Ms Fofana meets the good character requirement for Australian citizenship.

THE EVIDENCE

Ms Fofana seeks a passport

19. In 2012 Ms Fofana attended a passport office in Adelaide to enquire about obtaining a "travel document" and was informed by officials that she would require a Liberian passport to travel outside Australia. At that time travelling overseas was simply an idea she was exploring and there was no urgency.
20. At the passport office, no suggestion was made that Ms Fofana should apply for an Australian passport. This is as expected as Ms Fofana had been in the country for approximately two years at that point and would not have been eligible for Australian citizenship.

21. Ms Fofana says that in January 2014 she received a call on her mobile phone from an old school friend from the Republic of Guinea who was living in Malaysia, Mary Johnson. Ms Fofana had not had any contact with Ms Johnson since immigrating to Australia in 2010. Ms Johnson told the applicant that she was suffering from “kidney problems” and had been very ill for two years. Ms Fofana decided that she would endeavour to visit her sick friend in Malaysia as soon as she could.
22. Soon after the contact from Ms Johnson, Ms Fofana returned to the passport office in Adelaide to enquire about obtaining an Australian travel document. She testified at the hearing that she was again informed that she would require a Liberian passport in order to travel.
23. According to the Statement of Facts, Issues and Contentions provided by the applicant’s representative, *“The Applicant was advised that she was ineligible for any Australian travel document because she arrived on an Adoption visa [sic] and could apply for a Liberian passport if she wants to travel since she was a Liberian”*.
24. Ms Fofana subsequently telephoned the Liberian consulate in Australia. She contends that the Liberian official informed her that as there was no way to apply for a Liberian passport in Australia, she could consider asking someone that she trusted in Liberia to apply for a passport on her behalf.
25. Upon receipt of this information, Ms Fofana contacted Mr Abu Bakar Sackor, who she described as a family friend located in Liberia. Ms Fofana made contact with Mr Sackor through the Liberia based wife of her Australian adopted parents’ son. She writes in her statutory declaration:
- In 2014, I was told that Mr Sackor was in Liberia. I did not know anyone in Liberia who could assist me to obtain a passport. I contacted Mr Sackor to find out whether I could get a passport. He told that [sic] he would go to the Liberian Ministry of Foreign Affairs [sic] to enquire about the processing of passport for an applicant overseas. He made that enquiry and was informed that one could get their passport processed without being there. I was excited about the development and he asked me to send \$US 200.00 for the application and processing of the passport to which I sent him via Western Union. I cannot locate the receipt for the transfer at this stage.*
26. Ms Fofana provided Mr Sackor with information pertaining to her passport application including her identification documents, passport photo, Australian driver’s licence, date of

birth and family details using the “Viber” chat application. In total Ms Fofana paid Mr Sackor \$1,300 in money transfers to arrange the passport. The amount included a gratuity to thank him for arranging the passport. She received the document in 2014 via post.

27. Subsequent to the receipt of the passport, Ms Fofana received news that Ms Johnson had passed away. Consequently the passport was no longer required and Ms Fofana has never used it to travel.

Ms Fofana applies for Australian citizenship

28. As mentioned, Ms Fofana applied for Australian citizenship on 8 May 2016. As supporting evidence of her date of birth and birth name she provided a copy of the biodata page in her Liberian passport.⁴ As part of her application Ms Fofana also presented other documents including her driver’s licence and a bank statement.
29. On 8 May 2016 the Department wrote to Ms Fofana confirming receipt of her application.
30. Although there is no record of it in the s 37 documents, Ms Fofana was required to attend an interview with the Department and present originals of the documentation that she had provided as part of her application. Ms Fofana’s application for Australian citizenship was approved on 13 May 2017.

Provision of bogus document

31. The Department conducted a general examination on Ms Fofana’s passport and an internal departmental email dated 21 December 2016 states that the document was determined to be “altered” and containing a “counterfeit identify page”.⁵
32. The Tribunal notes that the Department had determined that the document was counterfeit four months *prior* to approving Ms Fofana’s application. This indicates there was ample opportunity for Ms Fofana’s citizenship approval to have been withdrawn prior to communicating to the applicant that it had been approved. The Tribunal also notes that it was 18 months between the Department identifying that the passport was bogus and communicating this crucial information with the applicant.

⁴T-documents, p. 27-29.

⁵ST-documents, p. 1.

33. It appears that Ms Fofana's application did not progress further until she sent an email to the Department on 20 July 2018 enquiring, not unreasonably, when her citizenship ceremony would be scheduled.
34. Shortly after, on 1 August 2018, Ms Fofana was served with a "*Notice of seizure of bogus documents*" in relation to her Liberian passport which the Department advised was a suspected bogus document.
35. On 4 September 2018 Ms Fofana was provided notice that the Department intended to consider cancelling her citizenship approval. The Department wrote that the provision of a bogus document suggested that she would not satisfy the good character requirement. The letter provided Ms Fofana with an opportunity to comment and respond to the information that the Department had put to her.
36. Relevantly, Ms Fofana reiterated her account of how the Liberian passport was sourced in the statutory declaration dated 18 September 2018:⁶

I contacted a friend in Liberia to assist with obtaining an ECOWAS Passport, as I could not travel to Liberia without a travel document. Unfortunately, when I received the ECOWAS passport my friend in Malaysia had already passed away, so I did not travel as planned. I can honestly say that I was not aware of the aforementioned passport being fraudulent, and I was assured that my friend was sincere.

37. Whilst Ms Fofana does not argue that the document is authentic, she does contend that she was not aware it was a bogus document at the time she submitted it to support her application.

Ms Fofana's travel requirements

38. In her application for citizenship Ms Fofana answered "yes" to the question "*does the applicant intend to depart Australia within the next 12 months?*" She states that the purpose of travel is "*Mother in law [sic] funeral service*".⁷ The Tribunal notes that on 20 July 2018 when Ms Fofana emailed the Department to follow up on the progress of her application she asks if they could help her as "*my [Mrs Fofana's] grandma [sic] wish is to*

⁶T-documents, p.53.

⁷T-documents, p. 22.

see me and my daughter before she passes on, it been [sic] 22 years since I last saw my grandma.”⁸

39. Her reason for obtaining the fraudulent passport initially was to visit Ms Johnson, who was gravely ill.
40. The Tribunal sought to elicit further details from Ms Fofana about her relationship with Ms Johnson but this proved difficult. The applicant’s testimony became vague and less convincing as she explained the course of events that enabled Ms Johnson, whom she stated she had not had any contact with since leaving Africa, to find her contact details prior to her passing.
41. The Tribunal also notes that Ms Fofana testified that she did not seek advice from her friends or family regarding her need to travel and lack of appropriate documentation. This strikes the Tribunal as unusual and detracts from the weight of the explanation she has provided for procuring the bogus document.

Character references

42. In addition to the character references provided to the respondent in September 2018,⁹ Ms Fofana has provided copies of more recent references from the President of the Muslim Cultural & Youth Association Sydney, Mohamad El Masri and Mory A M Kamara, who is the Imam of the Liberian Muslims Association of NSW. The referees vouch for Ms Fofana’s honesty. The Tribunal places some weight on these particularly as the referees demonstrate an understanding of the reason Ms Fofana’s application was refused.

CONSIDERATION

43. It is Ms Fofana’s submission that she was not required to provide the Liberian passport as part of her citizenship application. She claims that she chose to do so of her own accord and this lends significant weight to her contention that she did not know that the passport was a bogus document.

⁸T-documents, p. 39.

⁹T-documents, p. 49-56.

44. The respondent contends that Ms Fofana knew, or should have known, that the document was bogus because of the manner in which it was procured. In the SFIC the respondent states:

... the applicant's account as to how she obtained the passport is not plausible and should be rejected. The applicant's explanation is to the effect that she innocently relied on a friend, Abu Sackor, to obtain the passport for her... Critically, the applicant has not provided any explanation (let alone any plausible explanation) why Mr Sackor, who she states was a friend, would seek to defraud her or obtain a bogus passport on her behalf without her knowledge or request.

45. At the hearing Ms Fofana indicated that Mr Sackor was known to her but her description of their relationship does not indicate they were "friends" of any standing and there is no evidence that there was a rational or prudent basis for Ms Fofana to place trust in this individual. As mentioned, Mr Sackor was an individual who was located in Liberia and therefore geographically able to procure the passport on her behalf. The applicant was able to contact him through the wife of her adopted brother. It is not implausible that this individual sought to profit from Ms Fofana given the tenuous nature of their relationship.
46. In relation to Mr Sackor, Ms Fofana contends that when she was informed the passport he provided was bogus, she asked him to seek confirmation of the passport's authenticity and to provide written confirmation. Confirmation was not received and Ms Fofana had her sister in law report Mr Sackor to police and taken into custody after he was reported to the police. The Tribunal has before it documents including what appears to be a statement from the Ministry of Justice in Monrovia, Liberia, confirming that Mr Sackor has been charged with theft on the basis of his interactions with Ms Fofana. This is supported by a statement from her sister in law, confirming, inter alia, that Ms Fofana provided \$1,100 to "Abu".
47. The respondent's contention that it is implausible that Ms Fofana would believe that she was able to obtain a passport without the need to attend an interview, provide supporting documentation or her fingerprints is supported by some of the applicant's actions and testimony.
48. In addition to making enquiries at the Australian passport office, the applicant researched online to find out how to obtain a Liberian passport. The country information at the time reveals that, amongst other things, the applicant would have been required to attend an interview at the embassy and provide her fingerprints.

49. The applicant contends that “*the Liberian government only introduced the biometric system in 2016*” and it was not a requirement for fingerprints to be taken in order to obtain a passport until this time. The respondent submitted in evidence a UNHCR “*refworld*” website which disputes this claim:

... in November 2009, Liberia adopted a new biometric passport that meets the requirements of the Internal Civil Organization...

50. Ms Fofana also testified that she provided Mr Sackor with the documentation he required to obtain her passport on her behalf using the Viber messenger application. This included a passport photo, driver’s licence and her date of birth. She told the Tribunal that she was not required to sign any documents as part of the application process. Further, when Mr Sackor had requested the dates of birth of Ms Fofana’s parents she had provided the names and dates of birth of her adopted parents.
51. The Tribunal’s view is that a reasonable person would find it difficult to reconcile the Liberian government’s stated requirements for applying for a passport with the reality of Ms Fofana’s experience in procuring a passport through Mr Sackor. Indeed, the Liberian government’s requirements for applying for a passport are unremarkable. In contrast, applying for and receiving a passport, remotely and entirely through an unrelated third party, is notably unusual.
52. The applicant’s counsel argued that the unusual nature of the passport application process is reflective of how such matters are often managed in Africa. No evidence was presented to the Tribunal which supports this contention.
53. The Tribunal notes the unconventional way the passport was arranged, the substantial sum of money that was paid to Mr Sackor, the requirement for the applicant to provide few supporting documents, the absence of any forms to sign and the rapid receipt of the passport. In combination these factors would be expected to arouse uncertainty and suspicion of the passport’s authenticity.
54. For this reason, while we find that whilst Ms Fofana may not have known the document was bogus, she should have known and it was imprudent of her to use the passport to support her citizenship application.

CONCLUSION

55. Australian citizenship is a privilege and the community places high expectations upon those whom citizenship is conferred. In *Nguyen and Minister for Immigration and Border Protection* (Citizenship) [2018] AATA 1082 Senior Member Puplick observed:

*Citizenship of Australia is regarded as a special privilege when extended to those not automatically qualified. Earning it requires adherence not only to statutory requirements but also to the set of moral values and qualities related to honesty in dealings with the Government. These values and qualities are themselves a hallmark of good citizenship.*¹⁰

Citizenship cannot be awarded on the basis of false statements. There are no excuses for making false statements in this regard.

Equally, it is a hallmark of citizenship to take personal responsibility for one's own actions and not cast them off onto the shoulders of others. Even persons who are not able to manage well in the English language can do this without resort to placing themselves in the hands of deceitful third parties.

56. This is the starting point from which we must consider the Tribunal's findings.
57. This is an unfortunate case as Ms Fofana has demonstrated in many ways that she is an excellent candidate for Australian citizenship. She has created a life here, started a family and provided evidence that she has integrated into the community in a relatively short period of time. She has also worked hard to develop the skills and experience that will enable her to make a continuing contribution to the community. She writes in her submission to the Tribunal:

I have been in Australia for the past 8 years. The kind of situation that I come from in Liberia, I have nothing but respect and love for this country, and I have proven this through my conduct over the years. As is evident from my references, I am an active and responsible member of my community. I love helping people in the community and I have also channelled this passion in my job. I work as a disability support worker and I only choose this career because it gives me peace and pleasure helping people in need. As a result of my dedication and sincerity with my work, I was promoted from a casual employee to a permanent one within only 8 months...

58. Ms Fofana points out that the essential details presented in the bogus document are correct. This is not in dispute. In light of this, and the inexplicable circumstances in which the bogus document was proffered, the Tribunal accepts that she either did not know or chose not to accept that the document was fraudulent at the time she applied for Australian citizenship.

¹⁰ See *Zheng v Minister for Immigration and Citizenship* [2011] AATA 304 at [120].

59. However, the Tribunal must make a decision regarding Ms Fofana's character for the purpose of determining if she is not of good character and that the Minister may cancel the approval of her citizenship under s 25(2) of the Act.
60. Fundamentally, the applicant is asking the Tribunal to accept that she may provide a false identity document to support her application for Australian citizenship and still meet the "good character" requirement of the Act. Having regard for the totality of the applicant's circumstances, the Policy and an objective view of the established facts, we are not persuaded this is an appropriate outcome.
61. We find that Ms Fofana was imprudent and reckless in seeking to procure a passport in the manner in which she did. The Policy states that the applicant's "*behaviour is a manifestation of their essential characteristics*", and in this instance the essential characteristic manifested was injudiciousness.
62. By choosing to secure a passport through a distant contact, without adequate oversight and in breach of established and well accepted expectations in managing these matters, Ms Fofana did not demonstrate an ability to *distinguish right from wrong*. Taking expedient "short-cuts" when dealing with identity documents is not in keeping with community expectations, particularly when the outcome is a bogus document being presented as proof of identity to the Australian government.
63. Consequently, we find that Ms Fofana is not of good character for the purposes of s 24(2) (iii) of the Act and for the purposes of this application Ms Fofana has excluded herself from the *special privilege* of Australian citizenship.
64. Finally, the Tribunal notes DP Breen's decision in *Fenn and Minister for Immigration and Multicultural Affairs* [2000] AATA 931 at [8] where he states:

The refusal does not deprive Mr Fenn of any rights he currently holds, nor does it prevent him applying for citizenship again in a few years' time when he can demonstrate a longer period of positive contribution to the Australian community.

DECISION

65. For the reasons above, the decision under review is affirmed

*I certify that the preceding 63
(sixty -three) paragraphs are
a true copy of the reasons for
the decision herein of
Emeritus Professor P A
Fairall, Senior Member, Mr S
Evans, Member*

.....[SGD].....

Associate

Dated: 4 October 2019

Date(s) of hearing: **16 August 2019**

Advocate for the Applicant: **Oumarou Kamara**

Solicitors for the Respondent: **M Donald, Sparke Helmore**